

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	PS Docket No. 07-114
Wireless E911 Location Accuracy	)	
Requirements	)	
	)	

**AST TELECOM, LLC D/B/A BLUESKY COMMUNICATIONS  
PETITION FOR TEMPORARY WAIVER**

AST Telecom, LLC d/b/a BlueSky Communications (“BlueSky”), by its counsel, and pursuant to Sections 1.3 and 1.925 of the FCC’s rules<sup>1</sup> and the Commission’s *Fourth Report and Order*,<sup>2</sup> hereby seeks a waiver of Section 20.18(i) of the “Indoor location accuracy for 911” rules. BlueSky requests that the Commission waive the location accuracy requirements and associated reporting requirements of Section 20.18(i). BlueSky’s service area includes no Public Safety Answering Points (“PSAPs”) that are capable of receiving or using indoor location data or Phase II Enhanced 911 (“E911”) location data. Accordingly, BlueSky requests a temporary waiver of the Commission’s indoor accuracy provisions and reporting rules up to and until a PSAP served by BlueSky is capable of receiving and using Phase II E911 and indoor location data.

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<sup>1</sup> 47 C.F. R. §§ 1.3 and 1.925.

<sup>2</sup> *Wireless E911 Location Accuracy Requirements*, Fourth Report and Order, 30 FCC Rcd 1259, at ¶ 157 (2015) (discussing the applicable waiver standards) (“*Fourth Report and Order*”).

## **I. BACKGROUND**

BlueSky is a non-nationwide wireless telecommunications carrier providing wireless services to subscribers in American Samoa. American Samoa consists of five main islands, which collectively comprise approximately 77 square miles with a population density of 722 persons per square mile. A substantial portion of the population resides in Pago Pago.

As a result of limited capital spending on equipment, American Samoa's emergency response system throughout the years has been antiquated and incompatible with modern technology. In 2008, the 911 Emergency System simply consisted of all 911 calls going through the Department of Public Safety's ("DPS") Dispatch and then forwarded to EMS. At this time, PSAPs are not capable of receiving Phase II E911 location and indoor data. Currently, the operation and maintenance of American Samoa's 911 Emergency System is as a unit of the DPS Police Services Bureau and funded under the DPS annual operations budget.

## **II. GRANT OF A TEMPORARY WAIVER OF THE E911 INDOOR LOCATION RULES IS WARRANTED AND IS IN THE PUBLIC INTEREST**

BlueSky requests a waiver of the FCC's rules requiring Commercial Mobile Radio Service (CMRS) providers to deliver to Public Answering Safety Points (PSAPs) dispatchable location or "x/y" location of 911 callers within a prescribed number of meters for a prescribed percentage of 911 calls by the deadlines set forth in FCC Rule § 20.18(i), 47 C.F.R. § 20.18(i).

BlueSky also requests a waiver of associated requirements to submit to the FCC live 911 call data reports, indoor location accuracy certifications, implementation plans and progress reports required by FCC Rule §§ 20.18(i)(3)(ii)(E), 20.18(i)(3)(iii), 20.18(i)(4)(i) and 20.18(i)(4)(ii), respectively.

BlueSky has no choice but to request waiver of the 911 call location obligations of Section 20.18(i). BlueSky has no E911 Phase II-capable PSAP in its service area, yet the

obligations are not predicated on participation by an E911 Phase II-capable PSAP. The version of Section 20.18(a) released with the *Fourth Report and Order* excluded CMRS providers, with no E911 capable PSAPs, from the FCC's Section 20.18(i) obligations. The *Erratum* took away the exception and the rules published in the Federal Register matched the *Erratum*.

In the *Erratum*, at item 6, the limitation of 911 accuracy rules (to the extent the PSAP has requested and uses data) was changed to apply only to paragraphs (d) through (h)(2) and to paragraph (j) of Section 20.18. Paragraphs (d) through (h)(2) address Phase I (call back number and call site) and Phase II (locating outdoor 911 calls). Paragraph (j) covers delivery of confidence and uncertainty (c/u) data. Consequently, the non-capable PSAP exception was changed by the *Erratum* to apply only to Phase I, to Phase II outdoor rules, and to c/u requirements. Left missing from the non-capable PSAP exception was paragraph (i) – Indoor location accuracy for 911 and testing requirements. This change makes it impossible for BlueSky to comply with Section 20.18(i).

BlueSky must request a waiver of Section 20.18(i) because no PSAP in BlueSky's wireless service area is capable of receiving or utilizing 911 location data. No PSAP has asked BlueSky to provide outdoor or indoor 911 call location data. Therefore, BlueSky requests relief from the FCC's requirements to deliver indoor location data, test and report live 911 call data, certify location accuracy, file implementation plans, and file progress reports.

#### **A. BlueSky Will Deliver Location Data upon Request from a Capable PSAP**

At this time, expending scarce resources for the delivery of accurate location data to non-capable PSAPs is irrational. Whenever a PSAP in American Samoa requests location data, BlueSky is prepared to install the E911 call location system, then test and deploy with the

requesting PSAP. However, at this time, this activity and expenditure is futile without a valid request for the services from an E911 location-capable PSAP in American Samoa.

### **B. BlueSky's Request Meets the Standard for Waiver**

The Commission may waive its rules based upon a showing of good cause.<sup>3</sup> It may exercise discretion to waive a rule where particular facts would make strict compliance with the rule inconsistent with the public interest.<sup>4</sup> The Commission may take into consideration, on a case-by-case basis, factors involving equity, hardship, or more effective implementation of overall policy.<sup>5</sup> “Waiver of the Commission’s rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.”<sup>6</sup> The Commission’s authority to waive its rules resembles an obligation, in that it is a *sine quo non* to its ability to adopt otherwise inflexible rules.<sup>7</sup> This waiver authority is a necessary “safety valve” that makes the system work.<sup>8</sup>

BlueSky satisfies the Commission’s waiver criteria. Good cause exists to relieve BlueSky from compliance with Section 20.18(i) of the FCC’s rules in light of the circumstances. No

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<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”) (citing *WAIT Radio*, 418 F.2d at 1159).

<sup>5</sup> See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Sprint Communications Company, L.P. Petition for Waiver*, CC Docket No. 94-129, Order, DA 00-620 (rel. Mar. 17, 2000), at para. 4 (citing *WAIT Radio*, 418 F.2d at 1157).

<sup>6</sup> *Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, *Advantage Cellular Systems, Inc. Petition for Waiver of the FCC’s Universal Service Rules*, CC Docket No. 96-45, Order on Reconsideration, 31 FCC Rcd 3753, 3754 (para. 5 n.12) (2016) (citing *Northeast Cellular*, 897 F.2d at 1166).

<sup>7</sup> U.S. Cellular, *Petition for Limited Waiver and Request for Extension of Dates for Compliance with Mobility Fund Phase I Public Interest Obligations*, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 5, 2016) (“U.S. Cellular Petition”), at 12.

<sup>8</sup> *WAIT Radio*, 418 F.2d at 1157, 1159 (noting that “[t]he limited safety valve [provided by the waiver process] permits a more rigorous adherence to an effective regulation”), cited in *Smith Bagley, Inc., Petition for Waiver, Expedited Action Requested*, AU Docket No. 14-78 (filed Aug. 8, 2014), at 4.

PSAP in BlueSky's service area in American Samoa has either requested or is capable of receiving and utilizing 911 call location data. This environment nullifies the objectives of Section 20.18(i).

The Commission recognizes the public interest in granting a waiver when "special circumstances particular to smaller carriers may warrant limited relief from 911 requirements."<sup>9</sup> Circumstances such as "financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural, or characterized by difficult terrain (such as dense forest or mountains)" are pertinent and apply to BlueSky.<sup>10</sup> Compliance costs would be wasted by BlueSky, a carrier serving exceedingly remote, isolated areas where no PSAP can receive or use the location data. Likewise, BlueSky would bear undue burden devoting time and significant expense to periodically reporting to the Commission and public safety organizations E911 call activity and location accuracy that does not exist because no PSAP in American Samoa can utilize the data.

The public interest will be served by granting the requested temporary waiver so that BlueSky can productively allocate attention to providing wireless services to customers in its remote and sparsely populated service area. Even in places with only a couple of users on the wireless network, BlueSky can continue to provide wireless service rather than devote scarce resources to collect, deliver or report unused location data.

Until the time comes when a PSAP in American Samoa provides BlueSky with a valid request for 911 call location data, and such PSAP can receive and utilize the data, granting BlueSky a temporary waiver of Section 20.18(i) of the FCC's rules is appropriate, necessary and

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<sup>9</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petitions for Waiver of Section 20.18(g)(1)(v) of the Commission's Rules*, Order, 22 FCC Rcd 8927, at ¶ 7 (2007).

<sup>10</sup> *Id.*

in keeping with Section 1.925(b)(3) of FCC's rules. A waiver may be granted in Wireless Radio Services Applications and Proceedings when:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>11</sup>

Enforcing Section 20.18(i) obligations on BlueSky would not serve the purpose of locating 911 callers. Rather, it would trigger an inequitable waste of resources better spent on providing wireless service in remote areas. BlueSky has no reasonable alternative but to ask for temporary waiver of 911 call location data collection, delivery and reporting requirements.

No PSAP in American Samoa will be disadvantaged by grant of BlueSky's request. When a PSAP in American Samoa is ready, BlueSky will be able to implement a solution for delivery of the data. PSAPs may request FCC enforcement of Section 20.18(i) if they "have implemented policies that are designed to obtain all location information made available by CMRS providers when initiating and delivering 911 calls to the PSAP."<sup>12</sup> Grant of BlueSky's waiver request will not jeopardize the underlying purpose of this rule, ensuring that capable PSAPs can seek enforcement of a CMRS providers' 911 indoor location obligations. Meanwhile, BlueSky can conserve its financial resources in anticipation of the day it will provide location data to a capable recipient, to the benefit of customers and the local public safety community.

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<sup>11</sup> 47 C.F.R. § 1.925(b)(3).

<sup>12</sup> 47 C.F.R. § 20.18(i)(2)(iv).


### III. CONCLUSION

Participation by public safety authorities is essential for a provider like BlueSky to perform its role in facilitating E911 location services. Subscribers, visitors and workers in American Samoa have few choices for CMRS providers that focus on their unique needs. Careful allocation of energy, time and resources is essential to provision of wireless services, and grant of this Petition will help ensure service in an area where callers might otherwise have no access to wireless network signals at all.

For the foregoing reasons, BlueSky respectfully requests that the Commission grant a temporary waiver of the location collection, delivery and reporting requirements set forth in Section 20.18(i) of the Commission's rules.

Respectfully submitted,

AST TELECOM, LLC  
D/B/A BLUESKY COMMUNICATIONS

A handwritten signature in black ink, appearing to read "Todd B. Lantor", is written over a horizontal line.

Todd B. Lantor

Todd R. Slamowitz

**Lukas, LaFuria, Gutierrez & Sachs, LLP**

8300 Greensboro Drive, Suite 1200

Tysons, Virginia 22102

Tel: (703) 584-8678

E-mail: [tlantor@fcclaw.com](mailto:tlantor@fcclaw.com)

E-mail: [tslamowitz@fcclaw.com](mailto:tslamowitz@fcclaw.com)

*Counsel for AST Telecom, LLC  
d/b/a BlueSky Communications*

Date: April 3, 2017

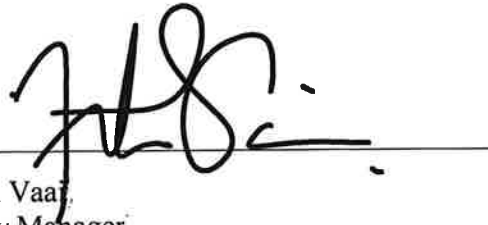
## DECLARATION

I, Filifotu Vaai, hereby declare under penalty of perjury as follows:

I am Country Manager of AST Telecom, LLC d/b/a BlueSky Communications.

This Declaration is submitted in support of the foregoing Petition for Temporary Waiver.

I declare, under penalty of perjury and pursuant to Sections 502 and 503(b) of the Communications Act of 1934 and Section 1001 of Title 18, United States Code, that the facts and information contained in the foregoing Petition are true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Filifotu Vaai', is written over a horizontal line.

Filifotu Vaai,  
Country Manager  
AST Telecom, LLC d/b/a BlueSky Communications



## **CERTIFICATE OF SERVICE**

I, Todd Slamowitz, hereby certify that on this 3<sup>rd</sup> day of April, 2017, copies of the foregoing PETITION FOR TEMPORARY WAIVER were sent by e-mail, in .pdf format, to the following:

Michael Wilhelm, Acting Division Chief  
Policy and Licensing Division  
Public Safety and Homeland Security Bureau  
Michael.Wilhelm@fcc.gov

Timothy May, Policy and Licensing Division  
Timothy.May@fcc.gov

National Emergency Number Association (NENA)  
location-reports@nena.org

Association of Public-Safety Communications Officials (APCO)  
911location@apcointl.org

National Association of State 911 Administrators (NASNA)  
director@nasna911.org

Best Copy and Printing, Inc.  
FCC@BCPIWEB.COM

  
Todd Slamowitz